

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 141**

The question is whether there would be any conflict between two City officers' positions as licensed professionals in City Department X and their part-time outside employment also as licensed professionals for a private firm [the Firm].

The Ethics Commission [Commission] does not address in this opinion the issue of whether a full-time officer of the City and County of Honolulu may engage in the private practice of any profession. This issue has been decided in the affirmative by the Department of the Corporation Counsel.

The Commission understands the facts to be as follows:

[The facts are deleted in order to maintain confidentiality.]

The following standards of conduct from the Revised Charter [RCH] and the Revised Ordinances of Honolulu 1978 [ROH] are relevant to the consideration of this matter:

ROH, Section 6-1.2. No officer or employee of the City, except as hereinafter provided, shall:

- (1) Participate, as an agent or representative of a City agency, in any official action directly affecting a business or matter in which (A) he has a substantial financial interest; . . . .
- (2) Acquire financial interest in business enterprises which he has reason to believe may be directly involved in official action to be taken by him.

RCH, Section 11-102. No elected or appointed officer or employee shall:

. . . .

2. Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his

official duties or which may tend to impair his independence of judgment in the performance of his official duties.

RCH, Section 11-103. Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to his appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk.

RCH, Section 11-104. No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

A large number of cases come before the two officers in Department X who work part time for the Firm. Among those, cases will undoubtedly appear in which private parties concerned have been clients of the Firm. Due to the nature of the cases that come to Department X, it would be unlikely that a person's business with the officers was related to the reason the person consulted the Firm. In other words, a person may go to the Firm about a matter concerning which the Firm has expertise and subsequently have business with the two officers relating to a different area of expertise.

While researching this matter for an advisory opinion, the Commission's staff spoke with several prominent licensed professionals in private practice. Two of these people who have had direct experience as licensed professionals working for the City in Department X agreed that it would be very rare for a case to arise in which the work of the Firm and the officers' work in Department X would both be involved. Obviously, if such a case did arise, the Commission would recommend that another officer in Department X who does not work for the Firm be asked to handle the case.

If this type of direct conflict were to arise other than infrequently, the Commission would have to recommend under Section 6-1.2(2), ROH, that licensed professionals who are officers in Department X not acquire a financial interest in the Firm. (Note that the definition of "financial interest" includes an employment under the definitions found in Section 6-1.2, ROH.). As the Commission has indicated above, the information the Commission has gathered indicates that it would be extremely unlikely for the Firm to be directly involved in official action to be taken by the officers in Department X. Therefore, the Commission holds that the two officers in question may acquire the proposed financial interest (employment) in the Firm.

The Declaration of Policy found in Section 11-101, RCH, states that elected and appointed officers and employees, as agents of public purpose, shall hold their offices or positions for the benefit of the public, shall recognize that the public interest is their primary concern, and shall faithfully discharge the duties of their offices regardless of personal

considerations. The Commission cautions the two officers to be aware of this Declaration of Policy when reviewing the RCH provisions regarding standards of conduct which were previously set forth in this opinion.

To summarize, two officers who are licensed professionals employed by the City may acquire a financial interest in the Firm by becoming employed also as licensed professionals with a special area of expertise. They may not take any official action directly affecting the Firm and should disqualify themselves if any cases of direct conflict arise. If conflict cases arise other than rarely, it would be incompatible with the proper discharge of their official duties to continue their outside employment at the Firm. In accordance with Section 11-103, RCH, when conflicts do arise, they must make full disclosure in writing to their appointing authority, the Mayor, and to the Commission.

Dated: September 18, 1984

GILBERT A. GIMA

Chair, Ethics Commission